

KAZEROUNI LAW GROUP, APC
Abbas Kazerounian, Esq. (249203)
ak@kazlg.com
Matthew M. Loker, Esq. (279939)
ml@kazlg.com
245 Fischer Avenue, Unit D1
Costa Mesa, CA 92626
Telephone: (800) 400-6808
Facsimile: (800) 520-5523

**LAW OFFICES OF TODD M.
FRIEDMAN, P.C.**
Todd M. Friedman, Esq. (216752)
tfriedman@attorneysforconsumers.com
Adrian Bacon, Esq. (280332)
abacon@attorneysforconsumers.com
324 S. Beverly Dr., #725
Beverly Hills, CA 90212
Telephone: (877) 206-4741
Facsimile: (866) 633-0228

HYDE & SWIGART
Joshua B. Swigart, Esq. (225557)
josh@westcoastlitigation.com
2221 Camino Del Rio South, Suite 101
San Diego, CA 92108
Telephone: (619) 233-7770
Facsimile: (619) 297-1022

*Attorneys for Plaintiff,
Neil Silver*

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

**NEIL SILVER, INDIVIDUALLY
AND ON BEHALF OF ALL
OTHERS SIMILARLY
SITUATED,**

Plaintiff.

V.

PENNSYLVANIA HIGHER EDUCATION ASSISTANCE AGENCY, DBA FEDLOAN SERVICING.

Defendant.

Case No.: 14-cv-652 PJH

**FIRST AMENDED CLASS ACTION
COMPLAINT**

HON. PHYLLIS J. HAMILTON

JURY TRIAL DEMANDED

///

1 1. Neil Silver (“Plaintiff”) brings this Class Action Complaint for
2 damages, injunctive relief, and any other available legal or equitable remedies,
3 resulting from the illegal actions of Pennsylvania Higher Education Assistance
4 Agency, dba FedLoan Servicing (“Defendant”), in negligently and/or willfully
5 contacting Plaintiff on Plaintiff’s cellular telephone, in violation of the Telephone
6 Consumer Protection Act, 47 U.S.C. § 227 et seq., (“TCPA”), thereby invading
7 Plaintiff’s privacy. Plaintiff alleges as follows upon personal knowledge as to
8 himself and his own acts and experiences, and, as to all other matters, upon
9 information and belief, including investigation conducted by his attorneys.

10 2. The TCPA was designed to prevent calls and text messages like the
11 ones described herein, and to protect the privacy of citizens like Plaintiff.
12 “Voluminous consumer complaints about abuses of telephone technology – for
13 example, computerized calls dispatched to private homes – prompted Congress to
14 pass the TCPA.” *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 744 (2012).

15 3. In enacting the TCPA, Congress intended to give consumers a choice
16 as to how corporate similar entities may contact them, and made specific findings
17 that “[t]echnologies that might allow consumers to avoid receiving such calls are
18 not universally available, are costly, are unlikely to be enforced, or place an
19 inordinate burden on the consumer. TCPA, Pub.L. No. 102–243, § 11. In support
20 of this, Congress found that:

21 [b]anning such automated or prerecorded telephone calls
22 to the home, except when the receiving party consents to
23 receiving the call or when such calls are necessary in an
24 emergency situation affecting the health and safety of the
25 consumer, is the only effective means of protecting
telephone consumers from this nuisance and privacy
invasion.

26 Id. at § 12; see also *Martin v. Leading Edge Recovery Solutions, LLC*, 2012 WL
27 3292838, at* 4 (N.D.Ill. Aug. 10, 2012) (citing Congressional findings on TCPA’s
purpose).
28

1 4. Congress also specifically found that “the evidence presented to the
 2 Congress indicates that automated or prerecorded calls are a nuisance and an
 3 invasion of privacy, regardless of the type of call....” Id. at §§ 12-13. See also,
 4 *Mims*, 132 S. Ct. at 744.

5 5. As Judge Easterbrook of the Seventh Circuit recently explained in a
 6 TCPA case regarding calls to a non-debtor:

7 The Telephone Consumer Protection Act ... is well
 8 known for its provisions limiting junk-fax transmissions.
 9 A less-litigated part of the Act curtails the use of
 10 automated dialers and prerecorded messages to cell
 11 phones, whose subscribers often are billed by the minute
 12 as soon as the call is answered—and routing a call to
 13 voicemail counts as answering the call. An automated
 14 call to a landline phone can be an annoyance; an
 15 automated call to a cell phone adds expense to
 16 annoyance.

17 *Soppet v. Enhanced Recovery Co., LLC*, 679 F.3d 637, 638 (7th Cir. 2012).

JURISDICTION AND VENUE

18 6. This Court has federal question jurisdiction because this case arises
 19 out of violations of federal law. 47 U.S.C. §227(b); *Mims v. Arrow Fin. Servs.*,
 20 *LLC*, 132 S. Ct. 740 (2012).

21 7. Venue is proper in the United States District Court for the Northern
 22 District of California pursuant to 18 U.S.C. § 1391(b)(2), because a substantial part
 23 of the events or omissions giving rise to Plaintiff’s claims occurred in this district;
 24 Plaintiff resides in Tiburon, California, which falls within the Northern District of
 25 California.

PARTIES

8. Plaintiff is, and at all times mentioned herein was, a citizen and resident of the State of California. Plaintiff is, and at all times mentioned herein was, a “person” as defined by 47 U.S.C. § 153 (10).

9. Plaintiff is informed and believes, and thereon alleges, that Defendant is, and at all times mentioned herein was, a corporation whose State of Incorporation is in Pennsylvania, and whose principal place of business is in the State of California. Defendant, is and at all times mentioned herein was, a corporation and is a “person,” as defined by 47 U.S.C. § 153 (10). Plaintiff alleges that at all times relevant herein Defendant conducted business in the State of California and in the City of Tiburon, within this judicial district.

FACTUAL ALLEGATIONS

10. In or around January 2014, Defendant began calling Plaintiff's cellular phone ending in #5583, utilizing a pre-recorded voice, in attempting to collect a debt that Plaintiff does not owe; prior to that point, Defendant had made efforts to contact Plaintiff via mail as well, about this particular debt, to which Plaintiff responded by requesting from Defendant, in writing, to not contact him by any means other than mail. Notwithstanding, Defendant continued placing calls to Plaintiff's cellular phone.

11. Two such calls were placed to Plaintiff's cellular phone by Defendant, on or about January 29, 2014; this call was placed from (800) 699-2908.

12. Defendant's communications with Plaintiff's cellular telephone were placed via an "automatic telephone dialing system," ("ATDS") as defined by 47 U.S.C. § 227 (a)(1), or an artificial or pre-recorded voice, as prohibited by 47 U.S.C. § 227 (b)(1)(A).

1 13. The telephone number that Defendant or its agents called was
2 assigned to a cellular telephone service for which Plaintiff incurs a charge for
3 incoming calls and texts pursuant to 47 U.S.C. § 227 (b)(1).

4 14. These calls were not made for emergency purposes as defined by 47
5 U.S.C. § 227 (b)(1)(A)(i).

6 15. Plaintiff never provided Defendant with his cellular phone number, in
7 writing or otherwise. Thus, at no time did Plaintiff provide Defendant or its agents
8 with prior express consent to make calls to his cellular phone, from an ATDS,
9 pursuant to 47 U.S.C. § 227 (b)(1)(A).

10 16. These calls by Defendant, or its agents, violated 47 U.S.C. § 227(b).

11 CLASS ACTION ALLEGATIONS

12 17. Plaintiff brings this action on behalf of himself and on behalf of and
13 all others similarly situated (“the Class”).

14 18. Plaintiff represents, and is a member of, the Class, consisting of:

15 All persons within the United States who received any
16 calls from Defendant, or its agent(s) and/or employee(s),
17 to said person’s cellular telephone, through the use of any
18 automatic telephone dialing system and/or prerecorded or
19 artificial voice, within the four years prior to the filling of
the Complaint.

20 19. Defendant and its employees or agents are excluded from the Class.
21 Plaintiff does not know the number of members in the Class, but believes the Class
22 members number in the thousands, if not more. Thus, this matter should be
23 certified as a Class action to assist in the expeditious litigation of this matter.

24 20. Plaintiff and members of the Class were harmed by the acts of
25 Defendant in at least the following ways: Defendant, either directly or through its
26 agents, illegally contacted Plaintiff and the Class members via their cellular
27 telephones, thereby causing Plaintiff and the Class members to incur certain
28 cellular telephone charges or reduce cellular telephone time for which Plaintiff and

1 the Class members previously paid, and invading the privacy of said Plaintiff and
2 the Class members. Plaintiff and the Class members were damaged thereby.
3

4 **21.** This suit seeks only damages and injunctive relief for recovery of
5 economic injury on behalf of the Class, and it expressly is not intended to request
6 any recovery for personal injury and claims related thereto. Plaintiff reserves the
7 right to expand the Class definition to seek recovery on behalf of additional
8 persons as warranted as facts are learned in further investigation and discovery.
9

10 **22.** The joinder of the Class members is impractical and the disposition of
11 their claims in the Class action will provide substantial benefits both to the parties
12 and to the court. The Class can be identified through Defendant's records or
13 Defendant's agents' records.
14

15 **23.** There is a well-defined community of interest in the questions of law
16 and fact involved affecting the parties to be represented. The questions of law and
17 fact to the Class predominate over questions which may affect individual Class
18 members, including the following:
19

- 20 a) Whether, within the four years prior to the filing of this Complaint,
21 Defendant or its agents placed calls to the Class (other than calls made
22 for emergency purposes or made with the prior express consent of the
23 person who received the calls) or to a Class member using any
24 automatic dialing system, to any telephone number assigned to a
25 cellular phone service;
26 b) Whether Plaintiff and the Class members were damaged thereby, and
27 the extent of damages for such violation; and
28 c) Whether Defendant and its agents should be enjoined from engaging
in such conduct in the future.

29 **24.** As a person that received calls from Defendant via an automated
30 telephone dialing system without Plaintiff's prior express consent, Plaintiff is
31 asserting claims that are typical of the Class. Plaintiff will fairly and adequately
32 assert these claims on behalf of the Class.
33

represent and protect the interests of the Class in that Plaintiff has no interests antagonistic to any member of the Class.

25. Plaintiff and the members of the Class have all suffered irreparable harm as a result of the Defendant's unlawful and wrongful conduct. Absent a class action, the Class will continue to face the potential for irreparable harm. In addition, these violations of law will be allowed to proceed without remedy and Defendant will likely continue such illegal conduct. Because of the size of the individual Class member's claims, few, if any, Class members could afford to seek legal redress for the wrongs complained of herein.

26. Plaintiff has retained counsel experienced in handling class action claims and claims involving violations of the Telephone Consumer Protection Act.

27. A class action is a superior method for the fair and efficient adjudication of this controversy. Class-wide damages are essential to induce Defendant to comply with federal and state law. The interest of Class members in individually controlling the prosecution of separate claims against Defendant is small because the maximum statutory damages in an individual action for violation of privacy are minimal. Management of these claims is likely to present significantly fewer difficulties than those presented in many class claims.

28. Defendant has acted on grounds generally applicable to the Class, thereby making appropriate final injunctive relief and corresponding declaratory relief with respect to the Class as a whole.

FIRST CAUSE OF ACTION
NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER
PROTECTION ACT
47 U.S.C. § 227 ET SEQ.

32. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

33. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.

34. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et seq., Plaintiff and The Class are entitled to an award of \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

35. Plaintiff and the Class are also entitled to and seek injunctive relief prohibiting such conduct in the future.

SECOND CAUSE OF ACTION
KNOWING AND/OR WILLFUL VIOLATIONS OF THE
TELEPHONE CONSUMER PROTECTION ACT
47 U.S.C. § 227 ET SEQ.

36. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

37. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.

38. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227 et seq, Plaintiff and The Class are entitled to an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(C).

39. Plaintiff and the Class are also entitled to and seek injunctive relief prohibiting such conduct in the future.

PRAYER FOR RELIEF

Wherefore, Plaintiff respectfully requests the Court grant Plaintiff and The Class members the following relief against Defendant:

FIRST CAUSE OF ACTION
FOR NEGLIGENT VIOLATION OF THE TCPA, 47 U.S.C. § 227 ET SEQ.

- As a result of Defendant's negligent violations of 47 U.S.C. § 227(b)(1), Plaintiffs seeks for themselves and each Class member \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).
 - Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.
 - Any other relief the Court may deem just and proper.

SECOND CAUSE OF ACTION
**FOR KNOWING AND/OR WILLFUL VIOLATION OF THE TCPA, 47
U.S.C. § 227 ET SEQ.**

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. § 227(b)(1), Plaintiffs seek for themselves and each Class member treble damages, as provided by statute, up to \$1,500.00 for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).
 - Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.
 - Any other relief the Court may deem just and proper

TRIAL BY JURY

46. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and hereby does demand, a trial by jury.

DATED: April 3, 2015

KAZEROUNI LAW GROUP, APC

BY: /s/ Matthew M. Loker
MATTHEW M. LOKER, ESQ.
ATTORNEY FOR PLAINTIFF